



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1183]

Certain Foldable Reusable Drinking Straws and Components and Accessories Thereof ;

Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order (“GEO”) prohibiting the unlicensed importation of foldable reusable drinking straws and components and accessories thereof that infringe one or more of claims 1-12 and 14-17 of U.S. Patent No. 10,123,641 (“the ’641 patent”). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 13, 2019, based on a complaint filed on behalf of The Final Co. LLC (“Final” or “Complainant”) of Santa Fe, New Mexico. 84 FR 61639 (Nov. 13, 2019). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foldable reusable drinking straws and components and accessories thereof by reason of infringement of claims 1-

12, 14-17, and 20 of the '641 patent. *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named seventeen respondents: Huizhou Sinri Technology Company Limited of Guangdong, China; Hebei Serun Import and Export Trade Co., Ltd. of Hebei, China; Dongguan Stirling Metal Products Co., Ltd. of Guangdong, China; Ningbo Wwpartner Plastic Manufacture Co., Ltd. of Zhejiang, China; Shenzhen Yuanzhen Technology Co., Ltd. of Shenzhen, China; Jiangmen Boyan Houseware Co., Ltd. of Guangdong, China; Shanghai Rbin Industry And Trade Co., Ltd. of Shanghai, China; Jiangmen Shengke Hardware Products Co., Ltd. of Guangdong, China; Funan Anze Trading Co., Ltd. of Anhui, China; Hangzhou Keteng Trade Co., Ltd. of Zhejiang, China; Hunan Jiudi Shiye Import And Export Trading Co., Ltd. of Hunan, China ("Hunan Jiudi"); Shenzhen Yaya Gifts Co., Ltd. of Guangdong, China; Ningbo Weixu International Trade Co., Ltd. of Zhejiang, China ("Ningbo Weixu"); Ningbo Beland Commodity Co., Ltd. of Zhejiang, China; Xiamen One X Piece Imp. & Exp. Co., Ltd. of Fujian, China; Hunan Champion Top Technology Co., Ltd. of Hunan, China; and Yiwu Lizhi Trading Firm of Zhejiang, China. *Id.* at 61639-40. The Office of Unfair Import Investigations ("OUII") is also named as a party in this investigation. *Id.* at 61640.

The Commission terminated respondents Ningbo Weixu and Hunan Jiudi from the investigation based on Complainant's partial withdrawal of the complaint. *See* Order No. 7 (Feb. 13, 2019), *unreviewed by* Comm'n Notice (Mar. 9, 2020).

On March 16, 2020, the Commission found the remaining fifteen respondents (collectively, the "Defaulted Respondents") in default. Order No. 8 (Mar. 3, 2020), *unreviewed by* Comm'n Notice (Mar. 16, 2020).

On April 7, 2020, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulted Respondents. On May 5, 2020, Complainant filed a motion for leave to supplement the motion for summary determination, and the ALJ granted leave on May 8, 2020. On May 27, 2020, OUII filed its response in support of Complainant's motion.

On July 17, 2020, the ALJ issued Order No. 13, an ID granting in part the motion for summary determination. *See* Order No. 13 (July 17, 2020). The ALJ found that Complainant established importation of the accused products and infringement of claims 1-12 and 14-17 of the '641 patent by Defaulted Respondents and that Complainant satisfied the technical prong of the domestic industry requirement. However, the ALJ did not grant the motion with respect to Complainant's satisfaction of the economic prong of the domestic industry requirement or infringement of claim 20, so the ALJ did not find a violation of section 337 by the Defaulted Respondents. The Commission determined not to review Order No. 13. *See* Notice (Aug. 18, 2020).

Also, on July 17, 2020, the ALJ issued Order No. 14, which required the parties to choose from several options on how to proceed. *See* Order No. 14, at 1-2 (July 17, 2020). On July 31, 2020, Complainant and OUII filed a joint response to Order No. 14. The joint response stated that Complainant would file a motion to amend the complaint to terminate its assertion of claim 20 of the '641 patent, and an additional motion for summary determination on the remaining issues.

On August 7, 2020, Complainant filed a motion for partial summary determination regarding the economic prong of the domestic industry requirement, a remedy in the form of a general exclusion order, and a bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value. On August 14, 2020, Complainant moved to replace Exhibit 11C within its motion for summary determination, which was granted by the ALJ. *See* Order No. 16 (Aug. 20, 2020). On August 24, 2020, OUII filed its response in support of Complainant's motion.

On August 17, 2020, Complainant moved to terminate the investigation with respect to asserted claim 20 by reason of withdrawal of the complaint allegations. On August 26, 2020, the ALJ granted the motion to withdraw claim 20. *See* Order No. 17 (Aug. 26, 2020), *unreviewed by* Comm'n Notice (Sep. 15, 2020).

On September 22, 2020, the ALJ issued Order No. 18, an ID granting Complainant's motion for partial summary determination that a domestic industry exists with respect to Complainant's research and development investments under section 337(a)(3)(C) and finding a violation of section 337 with respect to claims 1-12 and 14-17 of the '641 patent by the Defaulted Respondents. The ID also denied Complainant's motion for summary determination under section 337(a)(3)(B). No petitions for review of the ID were filed.

The ALJ concurrently issued a Recommended Determination ("RD") on the issues of remedy and bonding. The RD recommended the issuance of a GEO and setting the bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value. The Commission solicited comments from the public on public interest issues raised by the recommended relief. 85 FR 67010 (Oct. 21, 2020). No submissions were filed in response to the Commission Notice.

On November 5, 2020, the Commission determined not to review Order No. 18, thereby adopting the ID's finding of a violation of section 337 in connection with claims 1-12 and 14-17 of the '641 patent. 85 FR 71942-43 (Nov. 12, 2020). (The Order's denial of summary determination as to section 337(a)(3)(B) was not an initial determination subject to Commission review and hence was not adopted by the Commission). The Commission also requested the parties, interested government agencies, and other interested parties to file submissions on the issues of remedy, the public interest, and bonding during the period of Presidential review. *Id.* at 71944. On November 19 and November 23, 2020, OUII and Complainant, respectively, filed submissions on the issues of remedy, the public interest, and bonding as requested by the Commission. *See id.* at 71943-44. On November 30, 2020, OUII and Complainant each filed reply submissions. No other submissions were received in response to the Notice.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of foldable reusable drinking straws and components and accessories thereof that infringe one or more of claims 1-12 and 14-17 of the

'641 patent. The foldable reusable drinking straws and components and accessories thereof that are subject to the GEO are as follows: individual foldable reusable drinking straws and components thereof, cases used to store the foldable reusable drinking straws, and tools used for cleaning the foldable reusable drinking straws. The Commission has also determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the exclusion order. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred percent (100%) of the entered value of the imported articles subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated.

The Commission vote for this determination took place on January 28, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: January 28, 2021.

Lisa Barton,
Secretary to the Commission.

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